

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the “Commission”), under the authority vested in it under the Political Reform Act (the “Act”)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **June 20th, 2013**, at the ~~Isaac Newton Senter Auditorium~~ Board of Supervisors Chambers at 70 W. Hedding Street, San Jose, CA 95110, commencing at approximately ~~10:00 a.m.~~ 12:00 p.m. Written comments must be received at the Commission offices no later than **5:00 p.m.** on **June 18, 2013**.

BACKGROUND/OVERVIEW:

In 2010, the Commission authorized a task force to gather information regarding updating the Act and its regulations in the digital age. The result, after two informative hearings, hours of testimony, and input from a variety of sources, was the Commission-approved report: *Internet Political Activity and the Political Reform Act*. Timothy Hodsen and Elizabeth Garrett, then-Commissioners, chaired this sub-committee that heard public testimony on two occasions. The resulting report highlighted the need for greater disclosure of online activity as a bulk of campaign activity now occurs digitally.

The report explicitly delineated between bloggers (online commentators who are paid by a campaign) and individuals who blog or otherwise publicize online independently from any campaign. The report made clear the difference between political activity, paid for by a campaign committee, in which the public has an interest in disclosure, and activities of individuals not compensated by a campaign but simply expressing their own political views online. The proposed regulation addresses only the former.

Currently, the Act’s expenditure reporting provisions in Section 84211(k) require that committees disclose expenditures over \$100 made during a campaign period. In addition, the subvendor reporting provisions of the Act state that the person who provides consideration for a payment of \$500 or more, whether or not that person is the payee, must be reported. (Sections 84211(k)(6) and 84303; Regulation 18431.) Regulation 18401 provides committees guidance in recordkeeping for reporting purposes, and Regulation 18401(a)(4) instructs that a campaign maintain records for expenditures of \$25 or more, including the payee as well as the underlying vendor providing the goods or services.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

A committee that files a Form 460 must enter the name and address of the payee, the person providing services if applicable, and enter a code, if applicable, and a description if no code applies. Currently, there is no code for the type of activity encompassed in this regulation. Staff has been informed that the Secretary of State's office, responsible for maintaining and receiving the Form 460, cannot make any changes in the expenditure coding at present because of the precarious state of the Cal-Access system. For this reason, all reporting of this type would also include a description of the payment in the field the form provides.

As the subcommittee recommended, proposed Regulation 18421.5 requires that a committee report the following information on its Form 460: name of recipient of payment, name of person providing services, and name of websites or web addresses on which the communications (whether, blog, tweet, social media site, etc.) appear. The disclosure would apply to all paid communications for Internet Activities and would be reported in the aggregate to a particular payee or service-provider. By requiring the committee to report the payee and the service-provider, the regulation intends for committees to disclose those people they pay who are actually providing content for an Internet forum and the specific website URL where the content appears.

As in Regulation 18215.2, proposed Regulation 18421.5 only applies to *compensated* Internet activities for which a political committee pays. As the Federal Election Commission observed in its final rules addressing political Internet activity, "[A] communication through one's own website is analogous to a communication made from a soapbox in a public square." Thus, when an uncompensated individual simply links to a political website or communication, this activity is not sufficient to create coordination with a campaign or to trigger regulation under the PRA.

Additionally, Regulation 18421.5 applies to recipient committees, as defined in Section 82013(a), that would already be required to disclose expenditures and file a Form 460. Staff does not intend to create a reporting requirement on any individual, especially those who are unpaid Internet participants. This regulation addresses those recipient committees that pay bloggers or others who engage in Internet activity with no explicit disclosure. The people have the right and the desire to know if the opinions they are absorbing generate from a payment and from whom.

REGULATORY ACTION:

Adopt 2 Cal. Code Regs. Section 18421.5:

Proposed Regulation 18421.5 addresses an aspect of the Commission's focus on updating the Act for the new millennium. Currently, by reading expenditure reports, one cannot see expenditures made to support services related to Internet web logs ("blogs"), newsletters, or social media. A "blog" (short-form for "web log") is typically a space on the Internet where a person expresses his or her thoughts, promotes ideas, products, services, or any other topic one can imagine. This regulation would require greater transparency in such paid online communications.

SCOPE:

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY: Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE: The purpose of this regulation is to implement, interpret, and make specific Government Code Section 84211.

CONTACT: Any inquiries should be made to Heather M. Rowan Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.php?id=247#2>